



Federal Communications Commission
Washington, D.C. 20554

September 1, 2009

DA 09-1984

Merrimack Village District
P.O. Box 1949
2 Greens Pond Rd.
Merrimack, NH 03054

ATTN: Brian Wilson
Jill Vacchiano

In re: Request for Waiver of Section 1.946 and notification of construction
(File No. 0002968285) for WPRU605 (Mobile to Master) Path 1.

Dear Ms. Vacchiano:

On May 15, 2007 you filed a request on behalf of Merrimack Village District for waiver of Rule Section 1.946 of the Commission's rules.¹ You state that "The company through which we purchase our radio read waters meter deals with any/all FCC filings" and that Merrimack Village District management "was unaware until recent notification through another company that our license was going to be pulled due to lack of filing." Your application indicates that the path commenced operation on August 21, 2002. For the reasons stated below, we deny the waiver request, dismiss the notification of construction, and update the Commission's records to reflect that the license has terminated.

Section 1.946 requires that if a licensee fails to commence service or operations by the expiration of its construction period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires.² Section 1.946(e) sets out the process for licensees to request to extend a construction period or coverage period by filing FCC Form 601.³ The rule requires such a request to be filed before the expiration of the construction or coverage period.

The call sign and path in question has a February 2, 2001 first use date and a construction deadline of August 2, 2002.⁴ On April 29, 2002, a construction reminder was sent to Merrimack Village District for Station WPRU605.⁵ Your notification of construction states that the path commenced operation on August 21, 2002.⁶ Therefore the facilities were not constructed timely. In addition, we did

¹ See File No. 0002968285 (filed May 15, 2007) (Waiver Request).

² See 47 C.F.R. § 1.946(c).

³ 47 C.F.R. § 1.946(e).

⁴ See File Nos. 0000215522; Wireless Telecommunications Bureau Site-By-Site Action, *Public Notice*, Report No. 700 (rel. Feb. 07, 2001). See also 47 CFR § 101.63(a) ("Each Station ... authorized under this part must be in operation within 18 months from the initial date of grant.")

⁵ Reference No. 1404137

⁶ File No. 0002968285 (filed May 15, 2007) (Notification)

not receive your request for waiver of the late-filed notification of construction until May 15, 2007, almost 4 years and nine months after the construction deadline.

Pursuant to Section 1.925 of the Commission's Rules, we may grant a waiver if it is shown that either: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁷ In this case, we conclude that Merrimack Village District has failed to make the requisite showing that grant of a waiver is warranted under the circumstances presented. "An applicant for waiver faces a high hurdle even at the starting gate. When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action."⁸ Merrimack Village District provided no justification for the untimely construction of Station WPRU605. The Commission has emphasized that requiring licensees to file extension requests on a timely basis serves important policy objectives and has upheld the dismissal of untimely requests for extension.⁹ By operation of the Commission's automatic termination rule, the authorization for the microwave paths terminated on August 2, 2002. Accordingly, we deny the waiver request and update our licensing records to reflect that the referenced facilities are no longer valid because they terminated automatically on August 2, 2002.

If Merrimack Village District wishes to continue operating the terminated facilities, it must file a completed FCC Form 601, in accordance with all applicable Commission Rules, to reauthorize the facilities. In the interim, Merrimack Village District should file a request for Special Temporary Authority, in accordance with Section 1.931 of the Commission's Rules, if it wishes to continue operating the facilities.

Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.946 and 101.63 of the Commission's Rules, 47 C.F.R. §§ 1.946, 101.63, the request for waiver filed by Merrimack Village District on May 15, 2007 IS DENIED.

IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.946 and 101.63 of the Commission's Rules, 47 C.F.R. §§ 1.946, 101.63, that the licensing staff of the Broadband Division of the Wireless Telecommunications Bureau SHALL DISMISS the notification of construction filed by Merrimack Village District on May 15, 2007 (File No. 0002968285).

⁷ 47 C.F.R. § 1.925(b)(3).

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT*).

⁹ Nathan Sherman Enterprises, Inc., Lubbock SMR, Inc., S&C Investments, Inc., Triangle Communications, Inc., Mobilecom One, L.L.C., Hawaiian Wireless, Inc., HBS Communications, Inc., SRI, Inc. and Spectrum Resources of the Northeast, Inc., *Order*, 16 FCC Rcd 11150 (2001) ("As a general matter, allowing the filing of untimely extension requests... would undermine orderly and efficient spectrum management, lead to administrative uncertainty and delay, and hinder [the Commission's] ability to relicense scarce spectrum resources to other licensees who are ready and able to construct"); *see also* Interstate Power and Light Co., *Order*, 18 FCC Rcd 11051 (WTB PSPWD 2003).

IT IS FURTHER ORDERED that the licensing staff of the Broadband Division of the Wireless Telecommunications Bureau SHALL TERMINATE the authorization for Station WPRU605 and associated Path 1 in accordance with this letter and the Commission's Rules.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

Stephen Buenzow
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

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